

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0568P
Special Fuel Tax-Penalty
For the Tax Period Ending April 30, 2005

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Special Fuel Tax—Penalty.

Authority: IC § 6-6-2.5-62; IC § 6-6-2.5-64.

Taxpayer protests the imposition of the penalty for use of dyed or marked fuel on Indiana highways.

STATEMENT OF FACTS

The Indiana Department of Revenue (Department) assessed Taxpayer a penalty for operating a vehicle on Indiana highways using dyed or marked fuels. Additional facts will be supplied as necessary.

I. Special Fuel Tax—Penalty.

DISCUSSION

Taxpayer protests that it did not knowingly use dyed or marked special fuel in its vehicles. In particular, Taxpayer cites to IC § 6-6-2.5-62(c), which states:

No person shall operate or maintain a motor vehicle on any public highway in Indiana with special fuel contained in the fuel supply tank for the motor vehicle that contains dye or a marker, or both, as provided under section 31 of this chapter. This provision does not apply to persons operating motor vehicles that have received fuel into their fuel tanks outside of Indiana in a jurisdiction that permits introduction of dyed or marked, or both, special fuel of that color and type into the motor fuel tank of highway vehicles or to a person that qualifies for the federal fuel tax exemption under Section 4082 of the Internal Revenue Code and that is registered with the department as a dyed fuel user. A person who knowingly:

- (1) violates; or
- (2) aids and abets another person in violating;

this subsection commits a Class A infraction. However, the violation is a Class A misdemeanor if the person has committed one (1) prior unrelated violation of this subsection, and a Class D felony if the person has committed more than one (1) prior unrelated violation of this subsection.

IC § 6-6-2.5-62 has two parts. The first part is a prohibition against the use of dyed or marked special fuel in the fuel supply tank of vehicles driven on Indiana highways with certain exceptions not applicable to this case. Taxpayer does not dispute that it used dyed or marked fuels in the fuel supply tank of a vehicle driven on Indiana highways. However, Taxpayer argues that the dyed fuel possibly was introduced to the vehicle's fuel supply without Taxpayer's knowledge or act.

The second part is a criminal section for the knowing use of dyed or marked special fuels if the user knowingly uses the prohibited special fuels in the fuel supply tanks of vehicles driven on Indiana highways.

IC § 6-6-2.5-64 states:

(c) The department shall impose a civil penalty on the operator of a vehicle of two hundred dollars (\$200) for the initial occurrence, two thousand five hundred dollars (\$2,500) for the second occurrence, and five thousand dollars (\$5,000) for the third and each subsequent occurrence of a violation of either:

- (1) the prohibition of use of dyed or marked special fuel, or both, on the Indiana public highways, except for a person that qualifies for the federal fuel tax exemption under Section 4082 of the Internal Revenue Code and that is registered with the department as a dyed fuel user; or
- (2) the use of special fuel in violation of section 28(i) of this chapter.

IC § 6-6-2.5-64 only requires the use of special fuel in the fuel supply tank of vehicles on Indiana highways, and the absence of a statutory exception for that use, for a vehicle user to be subject to penalties. The level of culpability for a user of dyed or marked special fuel is mere use of the dyed or marked fuel in the fuel supply tank of that user's vehicles on Indiana highways, not a knowing use of those fuels. In other words, the imposition of penalty in this case is strictly required by statute.

Taxpayer has not presented evidence that it did not violate the prohibition against using dyed or marked special fuels in the fuel supply of a vehicle used on Indiana highways, and it did not provide evidence of any statutory exceptions that may otherwise apply; therefore, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.